

DATE: May 22, 2006 FILE REF: 3200

TO: Natural Resources Board Members

FROM: P. Scott Hassett, Secretary

SUBJECT: Background Memo on Proposed Revisions to Chapter NR 102, Wis. Adm. Code as Related to Outstanding and Exceptional Resource Waters.

Background:

In 1989, the Department adopted an anti-degradation policy which classified many waters as an Outstanding Resource Water (ORW) or Exceptional Resource Water (ERW). It was then that the Natural Resources Board approved a rule package designating numerous waters as ORW and ERW¹. The ORW/ERW list was subsequently updated in 1993 when approximately 300 new waters were added to the list, and again in 1998 when several lakes and impoundments were designated. To date, a total of 323 water have been designated as ORW, and 1,532 waters as ERW.²

Historically, a variety of characteristics were evaluated as part of the decision-making process for recommending waters for ORW/ERW designation. These characteristics included biological, chemical and social aspects. Consideration of these characteristics in combination with best professional judgment allowed Department staff to recommend ORW and ERW designations for various waters throughout the state.

Why rule is being proposed:

Revisions to the list of Outstanding and Exceptional Resource Waters in NR 102 are being recommended in response to an August 2004 Petition that was presented to the Natural Resources Board in August 2004 by Midwest Environmental Advocates and River Alliance of Wisconsin, in conjunction with numerous other conservation organizations. In this petition, filed under the authority of s. 227.12(1), Stats., the petitioners asked that the Department increase "regulatory protection for 100 of northern Wisconsin's highest quality rivers and streams by designating those streams as Exceptional Resource Waters or Outstanding Resource Waters."³

To address this petition, Department staff has evaluated available data for each of the waterbodies listed in the petition. For those segments where data indicated that an ORW or ERW designation was appropriate, and where there were not indications of water quality problems or the potential for such problems that may preclude an ORW or ERW designation, a recommendation is being made to add that segment to NR 102.10 (ORW) or NR 102.11 (ERW).

Summary of rule:

This rule package proposes revisions to ch. NR 102 to update the listings of Outstanding and Exceptional Resource Waters. Changes are proposed to 45 waters in Northern Wisconsin as described below and in Attachment 1.

¹ Wisconsin Department of Natural Resources. September 1995. *Outstanding and Exceptional Resource Waters: Analysis of Effects on Marinette County, WI*.

² Wisconsin Department of Natural Resources. 2004. Wisconsin Water Quality Assessment Report to Congress. PUB-WT-798-2004.

³ Midwest Environmental Advocates. August 17, 2004. Petition cover letter.

s. NR 102.10: Add 63 discrete segments on 38 different rivers as Outstanding Resource Waters

s. NR 102.11: Add 18 discrete segments on 7 different rivers as Exceptional Resource Waters

How this proposal affects existing policy:

There are no changes proposed to existing policy. This revision is simply an addition of waters to existing lists of Outstanding and Exceptional Resource waters.

Since the original promulgation of Outstanding and Exceptional Resource Waters in 1989, there were two updates to the list; both initiated by the Department. This is the first time that waters have been recommended for addition to NR 102 in response to a public request.

Previous Board involvement with these issues:

As noted previously, the Board has dealt with Outstanding and Exceptional Resource Waters in the past. In 1989, a rule package was approved by the Board that included both ORW and ERW designations. Additional ORW and ERW designations were approved by the Board in 1993 and 1998.

Impact of Proposed Rule—Who and How:

The listing of additional waterbodies as Outstanding or Exceptional Resource Waters in ch. NR 102 could potentially affect numerous interest groups.

- ***Regional and statewide conservation organizations:*** These groups believe that designating specific streams in northern Wisconsin as ORW/ERW will provide additional protection for many of the most highly valued waters that were identified by citizens of Northern Wisconsin during the development of the Northern Rivers Initiative of the mid to late-1990's.
- ***Northern Wisconsin Communities:*** Communities that are interested in expanding eco-tourism as a revenue base may find support by having more waters identified as O/ERW within their area of influence. For the counties affected by this rule revision, the total tourism expenditures were approximately \$1.7 billion or about 14% of the State total in Calendar Year 2005. The Department of Tourism and the Department of Natural Resources estimates that nearly 1/3 of the state tourism economy is related to "eco-tourism." Accordingly, approximately \$600 million was spent on eco-tourism in the affected counties – a value that may be positively impacted by additional O/ERW designations..
- ***Developers, waterfront property owners, and others who manage shoreland property:*** As a result of the linkage between O/ERW designations and certain provisions of Act 118, any waters included in NR 102.10 and NR 102.11 would be considered "Areas of Special Natural Resource Interest" (ASNRI). Accordingly, exemptions from Chapter 30 permits would not be available to cover select modifications to public navigable waters. Instead, an applicant would need to acquire a general or individual permit from the Department of Natural Resources. It should also be known, however, that many of the waters recommended for O/ERW designation are already considered to be ASNRI waters for other reasons and adding an O/ERW designation will not result in any additional restrictions related to implementation of the Chapter 30 program.
- ***Existing point source dischargers with a WPDES permit:*** Requests for an increase in a pollutant load from existing point sources would be subject to a needs demonstration under s. NR 207.04, Wis. Adm. Code. An ERW designation would not prohibit an increase although the permittee would be required to document that such an increase is needed before any additional pollutant load would be authorized. This demonstration is required of all dischargers that have existing water quality-based effluent limitations regardless of whether or not the receiving water has an ERW designation.

- ***Future point sources seeking a WPDES permit:*** Potential future permittees would be restricted to discharging wastewater that is of similar quality to the existing upstream water quality of any stream segment listed as O/ERW. This may require very sophisticated wastewater treatment technology. Prospective dischargers to ERW waters only may be provided some flexibility under s. NR 207.04 if a new surface water discharge were needed to prevent or correct a human health problem such as a contaminated drinking water supply.

Information on Environmental Analysis:

The Department has made a preliminary determination that an environmental assessment is not necessary for the rules contained in this Green Sheet package.

Small Business Analysis: Building contractors, developers of waterfront property and other waterfront businesses may be affected by this rule revision if a water is not already identified as an “*Area of Special Natural Resource Interest (ASNRI)*.” The majority of the waters proposed as part of this rule package are already identified as ASNRI waters and are subject to any statutory provisions triggered by the ASNRI designation. As a result, the addition of the waters recommended in this rule package will have very little impact on the people conducting businesses or personal activities that are subject to the provisions of Chapter 30, Wis. Stats.

Attachment – Rivers & Streams Recommended for Outstanding/Exceptional Resource Water Designation.